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Tribunal,

BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL
BENCH RAIPUR-M.P.

WP(S) 2753/05

Bhagwat Prasad Sarve,
Aged about 44 Yrs.
S/O.Shri Chhedilal Sarve
Working as Supervisor in
Intigrated Child Development Service
Kunkuri,
Distt.Jaspur-M.P. ...APPLICANT

VERSUS

1. State of M.P.
Through: Chief Secretary
Govt.ofM.P. Bhopal (MP)

2. Director,
Directorate of Social Welfare
Govt.of M.P.Bhopal

3. Director
Directorate of Mahila Avam Bal
Vikas, M.P.BHOPAL

4. Secretary
Panchayat Avam Gramin Vikas
M.P.Bhopal

5. Secretary
M.P.Public Service Commission,
Gwalior Boarding House,
Residential Area,
Indore-M.P. ..NON-APPLICANTS

APPLICATION UNDER SECTION 19-ADMINISTRATIVE TRIBUNALS ACT.

77

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. (s) No. 2753 of 2005

Petitioner : Bhagwat Prasad Sarve

Versus

Respondents : State of Madhya Pradesh & Others

Shri N.K. Vyas, counsel for the petitioner.
Shri Ajay Dwivedi, Panel lawyer for the respondents/State.

ORAL ORDER

(27th July, 2006)

1. The petitioner was appointed as Supervisor in the Directorate of Social Welfare by order dated 16.4.1985 and thereafter, he was sent on deputation to the Mahila Avam Bal Vikas Department in March, 1994. The petitioner continued to work in Mahila Avam Bal Vikas Department.

2. The Madhya Pradesh Public Service Commission issued a notification dated 26.9.1996 (Annexure-V) for recruitment of Additional Assistant Development Commissioner in the Panchayat and Rural Welfare Department.

3. Applications were invited from the employees working in the departments of Revenue, Agriculture, Cooperative, Panchayat and Rural Welfare, Mahila and Bal Vikas, Tribal Welfare, Employment, Husbandry, Dairy and Fishery, who had worked for 5 years in the said department.

4. The petitioner admittedly, having been appointed in March, 1994 on deputation, continued to work in Mahila Avam Bal Vikas Department for more than 5 years till the notification was issued and accordingly he had also made an application.

5. After having gone through the recruitment process, the petitioner was declared as successful and he found place in the select list at serial No. 178 against 250 posts. Out of 250 posts, 45 posts were reserved for Scheduled Tribes and the name of the petitioner in the select list of Scheduled Tribes was at serial No. 17.

6. The appointment of the petitioner was rejected on the ground that the parent department of the petitioner is School Education Department. The essential qualification required in the advertisement was not that the employees should be from the same department, as stated above, but the candidate would have worked for 5 years in any of the above stated departments. The petitioner satisfied the required essential qualification as notified in the advertisement dated 26.9.1996 (Annexure-V)

7. Learned counsel appearing for the petitioner further submits that there is no requirement that the employees should not have lien in the department, as stated above, from which the applications were invited. The working of the petitioner in Mahila Avam Bal Vikas Department is not disputed.

8. Clause 4 (ग) of the notification reads as under :-

"(ग) आवश्यक अर्हताएं– मान्यता प्राप्त विश्वविद्यालय से स्नातक उपाधि प्राप्त ऐसे कार्यपालिक अधिकारी/तृतीय श्रेणी कार्यपालिक कर्मचारी जो कि मध्यप्रदेश शासन के निम्नलिखित विभागों में से किसी भी विभाग मे 5 वर्ष की सेवा पूर्ण कर चुके हो – राजस्व, कृषि, सहकारिता, पचांयत एवं ग्रमीण विकास, महिला एवं बाल विकास, आदिम जाति कल्याण, समाज कल्याण, पशुपालन, डेयरी, मछली पालन विभाग।

टीप– आवेदक के पास उपर्युक्त अर्हता आवेदन पत्र प्रस्तुत करने की अंतिम तिथि तक होना चाहिए। आवेदन करने की अंतिम तिथि के बाद किसी भी दिनांक को आवश्यक अर्हता अर्जित करने वाले आवेदक उपर्युक्त विज्ञापन पदों के लिये विचारित होने की पात्रता नही रखेगे।"

9. I have heard learned counsel for the parties and perused the records appended to the petition.

10. Bare reading of the essential qualification prescribed in the notification dated 26.9.1996 (Annexure-V) makes it clear that the condition is working in any of the departments for 5 years and not that the employees, who have lien in the department alone should apply. Hence, the order dated 5.12.1998 (Annexure-I) passed by the respondent/State is bad and deserves to be quashed. The petitioner cannot be granted appointment w.e.f. 1996, in view of the fact that the persons appointed have settled their rights and they can not be disturbed after a period of 10 years.

11. However, in the facts of the case when the matter is pending in Tribunal/Court since 1999, the petitioner cannot be denied his legal right, which has accrued to him on the basis of the advertisement and selection thereof. Accordingly, the respondents are directed to consider and pass appropriate order of appointment with notional seniority and other benefits w.e.f. the date, the petitioner became entitled to be appointed.

12. The petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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